

SUPREME COURT OF NOVA SCOTIA

Citation: Royal Bank of Canada v. Marmura Estate, 2014 NSSC 17

Date: 20140117

Docket: Hfx No. 410276

Registry: Halifax

Between:

Royal Bank of Canada one of Canada's Chartered Banks and the Toronto-Dominion Bank, one of Canada's Chartered Banks

Applicants

and

Elizabeth S. Marmura and Elizabeth S. Marmura,
Executor of the Estate of Michael B. Marmura

Respondents

and

Daniel J. MacIsaac and Registrar General of Land Titles

Intervenors

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Judge: The Honourable Justice Allan P Boudreau

Heard: June 17, 2013 in Halifax, Nova Scotia

Subject: Land Registration Act of Nova Scotia –
Requirements of Recording –
Priorities – Trusts and “Relation Back Theory”.

Issues: What legal or priority status does the *LRA* convey on a duly recorded judgment *vis a vis* an unregistered instrument such as the Agreement in question?

If the *LRA*, on its plain and ordinary meaning, appears to grant priority to a recorded instrument *vis a vis* an unregistered one, is there a competing and overriding common law doctrine which survives the *LRA* in the circumstances of this case?

Summary: This case involves the apparently unsettled issue, in Nova Scotia at least, of the effects of an unregistered Agreement of Purchase and Sale under the relatively new Land Registration Information System (the “System”). This System was adopted and put in place in 2003 pursuant to the enactment of the *Land Registration Act*, S.N.S, 2001 c. 6, as amended, (the “*LRA*”). The *LRA* replaced the then existing Registry Act system, which had been in place for a long time. In the present case, an Agreement of Purchase and Sale was entered into and eventually closed; however, before the closing and the registration of the resulting deed, the two Applicants each recorded a judgement against one of the two vendors. The lawyer acting for all the parties to the Agreement of Purchase and Sale did not search the Judgement Roll prior to closing the transaction and he was consequently not aware of the two recorded judgements.

The Applicants now claim that the recorded judgements attached to the vendor’s legal interest in the property in question prior to closing and now request that their judgements be recorded on the Parcel Register for the lands. The Respondents and the Intervenors argue that, once the Agreement of Purchase and Sale was signed, the vendors had no ownership interest in the lands which could be attached by the subsequently recorded judgements, particularly since the transaction was ultimately completed.

Result: Found that the duly recorded judgements attached to the judgement debtor’s interest in the lands prior to the closing of the transaction. They were lawful and effective charges which were not taken into account at the closing. Applicants’ motion granted.

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